

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
SOUTH MENDOCINO COAST ACTION)
COMMITTEE for Review of Order)
No. 82-26 of the California)
Regional Water Quality Control)
Board, North Coast Region. Our)
File No. A-311.)
_____)

Order No. WQ 82-14

BY THE BOARD:

On March 25, 1982, the California Regional Water Quality Control Board, North Coast Region (Regional Board) adopted Order No. 82-26, waste discharge requirements for the proposed Whiskey Shoals condominium development on the Mendocino County coast. The requirements were issued to the Whiskey Shoals Homeowners Association, the Innisfree Companies (the project developer) and the California Coastal Conservancy which is sponsoring the project as part of its coastal restoration program. The development will consist of 55 two and three bedroom housing units, a portion of which will be set aside for rentals and time sharing. Sewage from the project will be disposed of via an on-site mound disposal system.

On April 22, 1982, the State Board received a petition from the South Mendocino Coast Action Committee (petitioner) objecting to several aspects of the project including the lack of a public agency to operate and maintain the sewage disposal system. We will review each issue raised by the petitioner.

CONTENTIONS AND FINDINGS

1. Contention: A public entity should be required to operate and maintain the wastewater disposal system.

Finding: We can appreciate the petitioner's concern with the Regional Board's approval of the Homeowner's Association as the primary entity responsible for operation and maintenance of the disposal system. Our Board has expressed its preference for public entity operation of on-site disposal systems. (See State Board Order No. WQ 79-21). Public entities tend to be more accountable for the proper functioning of on-site systems due to their permanency, financial resources and management expertise. However, the particular facts before us today lead us to conclude that it would not be appropriate to mandate public entity operation of the Whiskey Shoals disposal system.

Although a mound disposal system may be "innovative", as alleged by the petitioner, it is not a very complex system. A mound system is basically a septic tank/leachfield system with the leachfield in a raised area of soil to overcome the limitations of an area that has shallow soil or elevated groundwater conditions. Assuming the system is properly installed, it should not require very sophisticated operation and maintenance techniques. We note also that the waste discharge requirements provide for a reserve area equivalent to 375 percent of the disposal area for system augmentation or replacement, if necessary.

Our decision on this issue is also based in part on the apparent lack of an existing public agency in the area to manage the system. We agree with the petitioner that in the very least there should have been a showing by the developer that a good faith effort had been made to get a public entity to run the system. Nonetheless, in a letter to the Regional Board dated July 28, 1982, the Coastal Conservancy explains that no special district exists in the vicinity of the development. However, the City of Point Arena has expressed an interest in possibly contracting with the proposed Homeowners Association to provide staff to manage the system. Although the Homeowner's Association would still retain ultimate responsibility for compliance with the waste discharge requirements, we direct the Regional Board and the discharger to pursue this option. The City's involvement in operation of the facility will help to ensure proper operation and maintenance of the disposal system.

2. Contention: Waste discharge requirements should not be issued to a private entity unless the entity has already been established with recorded Covenants Conditions and Restrictions that reflect its ability to adequately operate and maintain the system.

Finding: Ordinarily, we would agree with the concept espoused by the petitioner. However, the Regional Board has, in essence, dealt with this concern in Provision 10 of the waste discharge requirements which states:

"These waste discharge requirements are subject to and shall not take effect until the discharger submits Articles of Incorporation for the Whiskey Shoals Homeowners Association and Declaration of Covenants, Conditions and Restrictions to the Executive Officer and the Executive Officer has approved in writing the adequacy of these documents."

This provision puts the discharger on notice that he is proceeding solely at his own risk. If the Executive Officer is not satisfied with the provisions of the Articles of Incorporation and the CC and Rs, the discharge will never take place.

The petitioner has raised several specific concerns which we direct the Executive Officer to take into consideration prior to his decision regarding approval of the Articles of Incorporation and the CC and Rs. The first concern regards the establishment of a sufficient reserve account to replace the system if necessary. Although we feel that funds for 100 percent replacement of the system are not necessary, there at all times should be adequate reserve money to replace at least 1 of the six proposed mounds. Since problems with one mound would tend to indicate potential problems with the others, the Executive Officer should require that the Articles of Incorporation and CC and Rs provide for further assessments of charges against the homeowners to replenish the reserve account and to provide funds if more money is needed for replacement in the future.

The petitioner is also concerned that the Capitol Account, which contains money for system operation and maintenance, be indexed to cover the costs of inflation. We find this to be

an appropriate request and direct the Executive Officer to act accordingly in his review of the discharger's proposals pursuant to Provision No. 10 of the waste discharge requirements.

Finally, although not specifically requested by the petitioner, the Executive Officer should consider requiring the discharger to post a bond for the life of the development to ensure that money will be available for repairs or other unexpected costs which may occur in the future. Factors to be considered should include the availability of such a bond and its cost effectiveness as compared to alternative methods for assuring the future operation of the disposal system.

3. Contention: The waste discharge requirements do not protect intertidal areas which may be affected by the flow of wastewater from the disposal area.

Finding: The Monitoring and Reporting Program adopted as part of the waste discharge requirements provides for coliform and nitrate analysis of water samples taken from both the discharge area and Ross Creek which is situated between the disposal site and the intertidal area. This monitoring should expose any problems with the quality of underflow leaving the disposal site. If the sampling results indicate a need for concern, it would then be appropriate for the monitoring requirements to be revised to monitor the mouth of the creek. However, until that time, it would be premature to require monitoring of the intertidal area.

If sampling from Ross Creek shows a high coliform or nitrate concentration, the mound system will have to be inspected and either repaired or reconstructed to prevent pollutants from leaving the disposal area.

4. Contention: The water supply system for the development will result in a lowering of the level of Moat Creek to a point that stream and fish life will be affected.^{1/}

Finding: Water for the development will be supplied by Point Arena Water Co., Unit 2. The Company will obtain the water from Moat Creek and from two existing wells. The water from Moat Creek has been appropriated pursuant to a water rights permit. There is presently pending a petition for an extension of time to complete the beneficial use of water as allowed by the permit. The petitioner's objections will be considered a protest to the petition and will be reviewed prior to our decision about whether or not to grant the petition for an extension of time.

We also direct our Division of Water Rights to determine whether the existing well which is approximately 75 feet from Moat Creek should be identified as a point of diversion for the water being appropriated from Moat Creek. We note that the second existing well is over 1,000 feet from the creek. Therefore, absence evidence to the contrary, we find that its source of water is groundwater.

1. We review this contention pursuant to Water Code §174 which directs that we provide for consideration of the availability of unappropriated water when waste discharge requirements are established.

CONCLUSIONS

For the reasons discussed above, we conclude that Order No. 82-26 is proper and appropriate.

ORDER

IT IS THEREFORE ORDERED that the petition is denied.

DATED: October 21, 1982

/s/ Carole A. Onorato
Carole A. Onorato, Chairwoman

/s/ L. L. Mitchell
L. L. Mitchell, Vice-Chairman

/s/ Jill D. Golis
Jill D. Golis, Member

/s/ F. K. Aljibury
F. K. Aljibury, Member

/s/ Warren D. Noteware
Warren D. Noteware, Member

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